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No. 83-1901

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

TEAMSTERS FREIGHT LOCAL UNION NO. 480
Petitioner,

vs.

RYDER TRUCK LINES, INC.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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TABLE OF CONTENTS

	Page
Table of Authorities	i
Statement of the Case	1
Argument	5
Conclusion	8

TABLE OF AUTHORITIES

	Page
Cases	
Boys Markets, Inc. v. Retail Clerks, 398 U.S. 235 (1970)	6
Buffalo Forge Co. v. Steelworkers, 428 U.S. 397 (1976)	6
Gary-Hobart Water Corp., 210 NLRB 472 (1974)	6
Gateway Coal Co. v. Mineworkers, 414 U.S. 368 (1974)	6
Hicks v. Miranda, 422 U.S. 322 (1975)	7
Jacksonville Bulk Terminals, Inc. v. Longshoremen, 457 U.S. 702 (1982)	7
Kellogg Co. v. NLRB, 457 F.2d 519 (6th Cir. 1972)	6
Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 281 (1956)	5
Pacemaker Yacht Co. v. NLRB, 663 F.2d 455 (3rd Cir. (1981)	6
Ryder Truck Lines, Inc. v. Teamsters Freight Local Union 480:	3
705 F.2d 851 (6th Cir. 1983)	3

710 F.2d 233 (6th Cir. 1983) 4

727 F.2d 594 (6th Cir. 1984) 4

Teamsters v. Lucas Flower Company, 369 U.S. 95 (1962) 6

United States v. American Foreign S.S. Corp., 363 U.S. 685 (1960) 7

United States Steel Corp. v. NLRB, 711 F.2d 772 (7th Cir. 1983) 6

Statutes

28 U.S.C. §46(c) 7

29 U.S.C. §104 6

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STATEMENT OF THE CASE

Contrary to the rather impassioned constitutional pleas raised by Petitioner, this case presents simply an issue of contract interpretation. The Sixth Circuit, *en banc,* carefully examined the collective bargaining agreement in light of the relevant legal precedent and concluded that the Union had clearly and unmistakably waived its right to strike over both arbitrable and nonarbitrable disputes. The decision of the Court of Appeals in this case is consistent with federal labor policy, decisions of this Court and decisions of other Courts of Appeals, and presents no issue worthy of review by this Court; therefore, the Petition for a Writ of Certiorari should be denied.

Factual Background

Respondent Ryder Truck Lines, Inc. (Ryder) is a motor common carrier engaged in the interstate transportation of freight. Respondent Teamsters Freight Local Union No. 480 (Local 480) is a labor organization affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and serves as the exclusive bargaining agent for Ryder's employees located at its Nashville, Tennessee terminal.

The initial dispute leading to the Union's strike in this case occurred at Ryder's terminal in St. Louis, Missouri. On May 16, 1977, two employees of the company, both over the road drivers and members of Local 480, reported for their dispatches in St. Louis. After inspecting their respective units, both drivers refused to proceed with their dispatches because they claimed the windshields of their tractors were dirty. Following company policy, Ryder instructed the drivers to wash their own windshields and proceed with their runs. The two drivers then consulted by phone with Union officials in Nashville and refused either to wash their own windshields or proceed with their runs.

The company's dispatcher, after consulting with his superior, informed the drivers that unless they proceeded as directed, they would be treated as having voluntarily quit their employment. The two drivers refused to proceed as directed, the dispatcher informed them that they had voluntarily quit and requested that the drivers leave the premises. The drivers refused to leave.

When it became apparent that the drivers would neither drive their trucks nor leave the premises, the company called the St. Louis police to have the men removed. The police repeatedly requested that the drivers leave peacefully. Having once more called Union officials in Nashville, the two drivers refused, stating that the company could fire them or have them arrested, but that they would not voluntarily leave the premises. The police informed the dispatcher that they could remove the

drivers only if a warrant for trespassing was issued. After further attempts to get the drivers to leave peacefully failed, the dispatcher agreed to sign a warrant for trespassing, and the drivers were arrested and escorted to jail. The drivers remained in jail for approximately six (6) hours.

Shortly after these events occurred in St. Louis, Local 480 established a picket line at Ryder's Nashville terminal and instituted a work stoppage there. The Union obtained the release of the drivers from jail and they were flown back to Nashville on the morning of May 17, 1977. After returning to Nashville, the drivers went to the Union hall and then to the company's terminal. The drivers arrived at the terminal at approximately 1:00 p.m. The strike ended at approximately 2:00 p.m. on May 17, 1977.

Proceedings Below

The company instituted this action on May 17, 1977 by way of a complaint seeking a temporary restraining order to enjoin the work stoppage. The original complaint was amended on May 26, 1978 to seek monetary damages for losses incurred by the company as a result of the Union's strike. Trial was held without a jury on January 12, 1981. In an unpublished decision entered on January 27, 1981, the District Court held that the strike by Local 480 violated the terms of the collective bargaining agreement, and the Court assessed damages against the Union in the amount of $26,238.50.

On appeal, a panel of the Sixth Circuit vacated the judgment and remanded the case to the District Court to make a specific finding of fact concerning the reason for the strike. *Ryder Truck Lines, Inc. v. Teamsters Freight Local Union 480,* 705 F.2d 851 (6th Cir. 1983). According to the panel decision, the District Court's failure to make a factual determination of the reason for the strike was reversible error because the agreement properly construed, prohibited strikes only over arbitrable disputes. Senior Circuit Judge Peck dissented from the panel's decision.

The company filed a petition for rehearing, with a suggestion for rehearing *en banc*. The petition for rehearing was granted and the court directed that the case be reheard *en banc*. 710 F.2d 233 (6th Cir. 1983). Upon rehearing, the Court, in a nine (9) to three (3) decision, affirmed the District Court's judgment, concluding that the Union had clearly and unmistakably waived its right to strike over both arbitrable and nonarbitrable disputes. *Ryder Truck Lines, Inc. v. Teamsters Freight Local Union 480,* 727 F.2d 594 (6th Cir. 1984).

ARGUMENT

1. There Is No Substantial Constitutional Question Presented.

Through a series of startling factual and legal inaccuracies, Petitioner attempts to elevate the Union's conduct onto a constitutional plane in an attempt to justify its actions in this case. The end result of Petitioner's argument, if accepted, would be to allow any Union to strike with impunity over virtually any cause, under the guise of First Amendment freedom. Petitioner's argument finds no support in this Court's prior cases.

The issue in this case is not whether the Union and its members have a First Amendment right to assemble peaceably free from governmental restriction. This simply is not a case where Congress or a State has enacted a law restricting activities that arguably fall within the protection of the First Amendment. On the contrary, this case simply involves a contractual dispute between two parties to a collective bargaining agreement. The sole issue in this case concerns the proper interpretation of the no strike clause of that collective bargaining agreement. No substantial constitutional question is presented that warrants review by this Court.

2. The Decision of the Court of Appeals Is Consistent With Prior Decisions of This Court and of Other Courts of Appeals.

The Sixth Circuit decided in this case that the Union had clearly and unmistakably waived its right to strike over arbitrable and nonarbitrable disputes, with specific exceptions that are set forth in the collective bargaining agreement. The Court reached its decision by interpreting the no strike clauses of the collective bargaining agreement in light of the contract as a whole and in light of the applicable law, as required by *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 281 (1956). In requiring that the Union's waiver of its statutory right to strike be clear and unmistakable, the Sixth Circuit was consistent with its own

prior decisions, decisions of the National Labor Relations Board, and decisions of other Courts of Appeals. *Kellogg Company v. NLRB,* 457 F.2d 519 (6th Cir. 1972); *Gary-Hobart Water Corp.,* 210 NLRB 472 (1974); *Pacemaker Yacht Co. v. NLRB,* 663 F.2d 455 (3rd Cir. 1981).

In holding that the doctrine of coterminous interpretation is not applicable to this case because this case involves an express, rather than an implied no strike clause, the Sixth Circuit properly refused to extend this Court's decisions in *Teamsters v. Lucas Flower Company,* 369 U.S. 95 (1962) and *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974). Both *Lucas Flower* and *Gateway Coal* dealt with implied no strike clauses; therefore, neither case established rules for interpreting express no strike agreements. The Sixth Circuit correctly refused to apply the rationale of *Lucas Flower* and *Gateway Coal* to limit the terms of an otherwise unqualified express no strike clause. *United States Steel Corp. v. NLRB,* 711 F.2d 772 (7th Cir. 1983).

The Sixth Circuit also properly refused to extend this Court's decisions in *Boys Markets, Inc. v. Retail Clerks,* 398 U.S. 235 (1970) and *Buffalo Forge Company v. United Steel Workers,* 428 U.S. 397 (1976), cases involving injunctive relief, to an action for damages. Petitioner's argument that "a collective bargaining agreement should not have varying import and meaning dependent upon the type of judicial relief sought" ignores completely the strict anti-injunction provisions of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104. The Norris-LaGuardia Act restricts the ability of a court to enforce a no strike clause by way of injunction. Under *Boys Markets* and *Buffalo Forge,* this statutory restriction prevents a court from enjoining a strike unless that strike is over an arbitrable dispute. A no strike clause does not have a different meaning when injunctive relief is sought, a court is simply prevented from enforcing the no strike clause by way of injunction except in limited circumstances. This Court has made it clear that the issue of

whether a strike violates an express no strike clause is a separate issue from that of whether such a strike can be enjoined. *Jacksonville Bulk Terminals, Inc. v. International Longshoreman's Association,* 457 U.S. 702, 721-722 (1982).

3. Petitioner Has Not Timely Raised the Issue of the Composition of the Court Below.

Petitioner has raised as an issue the composition of the Court below, alleging that Senior Judge Peck was ineligible to participate in the *en banc* deliberations and that the decision of the Court of Appeals is therefore void. Review by this Court on this issue is not warranted for several reasons.

First, the objection to the composition of the Court below is not timely raised. Petitioner objects to the composition of the Court for the first time on this appeal, not having raised the objection in the Court below. Because no objection was presented to the Court below, it is too late to raise the objection before this Court. *Hicks v. Miranda,* 422 U.S. 322, 328 n. 5 (1975).

Second, Senior Judge Peck was eligible to participate in the *en banc* deliberation under the governing statute, 28 U.S.C. §46 (c), which allows a Senior Circuit Judge to sit as a member of an *en banc* court if that judge was a member of the panel that originally decided the case. The fact that the Sixth Circuit might arguably have run afoul of its own rules by allowing Judge Peck's participation is at best a matter to be dealt with by the Sixth Circuit itself and does not merit review by this Court. *See, United States v. American Foreign S.S. Corp.,* 363 U.S. 685, 695 (1960) (Justice Harlan, dissenting).

Finally, even if the participation by Senior Judge Peck in the *en banc* proceedings can be classified as error it is harmless error. The decision of the *en banc* court was a nine (9) to three (3) decision; therefore, even if Senior Judge Peck's vote is not counted, a majority of the court remains in favor of affirming the district court.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that two copies of the foregoing Brief of Respondent in Opposition was this day forwarded to Cecil D. Branstetter and R. Jan Jennings, BRANSTETTER, KILGORE & STRANCH, 200 Church Street, 4th Floor, Nashville, Tennessee 37201, this 8th day of June, 1984.